

Christian A. Torimino, WSBA #52927
Trial Attorney
Office of the United States Trustee
1220 SW 3rd Ave., Rm. 315
Portland, OR 97204
Telephone: (202) 306-4948
Email: christian.torimino@usdoj.gov

Attorney for Gregory M. Garvin,
Acting United States Trustee for Region 18

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON**

In re

Aloysius N. Fobi,

Debtor.

Case No. 23-30948-pcm11

**UNITED STATES TRUSTEE'S
OPPOSITION TO DEBTORS'
MOTION TO USE CASH
COLLATERAL**

UNITED STATES TRUSTEE'S OPPOSITION

Gregory M. Garvin, Acting United States Trustee for Region 18 (the "U.S. Trustee"), by and through his undersigned counsel, objects to Aloysius N. Fobi's ("Debtor") Motion to Use Cash Collateral and Authority to Grant Replacement Lien or for a Comfort Order (the "Motion"). The Court should deny Debtor's Motion or, in the alternative, only approve expenses for which the Debtor can support with evidence and avoid any determination on the extent of any potential lien.

MEMORANDUM IN SUPPORT OF OBJECTION

Debtors' Motion seeks court approval of a staggering monthly budget of \$13,955 without any supporting documentation or clarity on whether such funds constitute cash collateral. Debtor has not made a showing that approval of \$4,435 on an interim basis "is necessary to avoid immediate and irreparable harm to the estate pending a final hearing," as required by FRBP

4001(b)(2).

The Requested Comfort Order is Inappropriate

Authority to use cash collateral can only be granted during the first 14 days of a case to the extent necessary to avoid immediate and irreparable harm. Fed.R.Bankr.P. 4001(b)(2). Debtor's Motion, however, seeks to use this process to obtain a "comfort order" adjudicating rights of potential lienholders as to Debtor's assets with three days' notice by asking the Court for "An Order deeming Debtor's future wages as not subject to the UCC filing of Creditor." Depending on the ultimate scope of the creditor's lien, such an order is either unnecessary or inappropriate. In either case, Debtor has not shown that such an order is necessary to avoid immediate and irreparable harm to the estate.

The Budget Contains Excessive Expenses and Should not be Approved

The budget attached as Exhibit B to the Motion (the "Budget") exceeds the Schedule J budget by \$145 and has some amounts differing from that schedule. The following monthly expenses in the Budget for which Debtor seeks interim approval are objectionable without further evidence:

1. \$1,100 for Utilities, which is nearly double the \$650 budgeted for utilities in schedule J.
2. \$915 for home maintenance.
3. \$1,125 for health, auto, and life insurance.
4. \$900 for child education.
5. \$5,300 mortgage expense and, separately, a \$320 property tax expense.

The expenses in Debtor's Budget, and the resulting projected disposable income, will be an important issue in any eventual plan confirmation. 11 U.S.C. § 1129(a)(15)(B). Approval of an inflated budget in connection with a cash collateral motion might provide Debtor justification

for those expenses at the confirmation stage.

CONCLUSION

For the reasons stated above, the Court should deny the Debtor's Motion. In the alternative, the Debtor should be required to make a showing that the expenses in the Budget are necessary to avoid immediate and irreparable harm.

DATED this 3rd day of May, 2023.

Respectfully submitted,

GREGORY M. GARVIN
Acting United States Trustee for Region 18

/s/ Christian A. Torimino
CHRISTIAN A. TORIMINO
WSBA #52927, Trial Attorney

CERTIFICATE OF SERVICE

I hereby certify that on May 3, 2023 I served a copy of the foregoing UNITED STATES TRUSTEE'S OPPOSITION TO DEBTORS' MOTION TO USE CASH COLLATERAL on all parties included on the Court's CM/ECF electronic service list.

GREGORY M. GARVIN
Acting United States Trustee for Region 18

/s/ Christian A. Torimino
CHRISTIAN A. TORIMINO
WSBA #52927, Trial Attorney

CERTIFICATE OF SERVICE